

UNITED STATES OF AMERICA)
)
 v.) Docket No. 1:17cr142
)
 MICHAEL CHRISTOPHER ESTES)

As the Court is aware, the defendant was charged in Count Two of the Bill of Indictment and then pleaded guilty to the offense of Possession of an Explosive in an Airport, in violation of Title 18, United States Code, Section 844(g)(1). The Federal Bureau of Investigation (“FBI”) Laboratory in Quantico, Virginia found that the device constructed by the defendant and left at the Asheville Airport was an improvised incendiary device (see attached report of David P. DeFusco dated April 19, 2018). Of particular importance was the finding that the brown colored prills (small aggregates or globules of material formed during the manufacturing process) within the device were consistent with a fertilizer containing ammonium nitrate. As stated in that report, when mixed properly, an ammonium nitrate based fertilizer and a fuel can make an explosive mixture. The detailed chemical analysis of the prills was contained in an additional FBI Laboratory Report (see attached report of Raleigh Parrott, II dated January 9, 2018).

The Final Pre-Sentence Report provided for a two level enhancement of the defendant's base offense level, pursuant to U.S.S.G. § 2K2.1(b)(3)(B), because the defendant's offense involved a destructive device. The defendant objected to that enhancement and claimed that the device he constructed and left at the Asheville Airport was not a destructive device for purposes of the Sentencing Guidelines. In support of that argument, the defendant attached the report of expert Jerry Taylor.

The defendant, through counsel, provided the government with an amended and updated version of Mr. Taylor's report the day of the prior sentencing hearing. While acknowledging that there was a fuel source underneath the device, the report took issue with the April 19, 2018 FBI report's failure to state whether or not there was a fuel source present inside the device and, thus, calling into question whether or not there was an ammonium nitrate/fuel mixture even in the device. The issue raised further called into question whether or not the government charged and the defendant pleaded guilty to the correct offense.

The defendant confessed to the FBI, among other things, that he did in fact mix a fuel source into the prills contained within the device. The Court continued the sentencing hearing to allow the government time to conduct additional testing on the device – namely the government intended to have the prills themselves tested so that the government could confirm that the defendant did in fact mix a fuel source into the prills contained within the device.

The FBI conducted that additional testing and confirmed the presence of residues of fuel within the prills, namely ethanol (see attached report of Raleigh Parrott, II dated November 28, 2018) – thereby corroborating the defendant's confession on that point, undercutting the issue raised by the defendant's expert, and putting to rest the concern that the defendant was not charged

with or did not plead guilty to the correct offense. That attached reports are submitted for the Court's consideration. They have already been turned over to the defense. The government anticipates calling Special Agent Corey Zachman of the FBI as a witness at the upcoming sentencing hearing to discuss the device left at the airport, put photographs of the device into evidence, and to detail the defendant's confession. The government will otherwise rely on the attached reports in support of its argument that the device constructed by the defendant and left at the Asheville Airport was indeed a destructive device for purposes of the Sentencing Guidelines. Respectfully submitted this 4th day of December, 2018.

R. ANDREW MURRAY
UNITED STATES ATTORNEY

THOMAS M. KENT
ASSISTANT UNITED STATES ATTORNEY
s/ Thomas M. Kent
New York State Bar No. 2966364
100 Otis Street
Asheville, North Carolina 28803
(828)271-4661
Fax: (828)271-4670
Email: thomas.kent@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel for the defendant at: Fredilyn.Sison@fd.org

This the 4th day of December, 2018.

s/ Thomas M. Kent

Assistant U.S. Attorney